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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/026,397	12/21/2001	Matthew A. Hayduk	42390P12402	1097
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EXAMINER

COFFY, EMMANUEL

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,397

Applicant(s)

HAYDUK, MATTHEW A.

Examiner

Emmanuel Coffy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4, 7 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Amendment

1. This action is responsive to the amendment filed on October 26, 2005. Claims 1, 6 13, 14, and 16-19 were amended. Claims 3-4, 7 and 15 are cancelled. Claims 1-19 directed to a device, method and article for a "Portable Computing Device Having a Dynamic Client Classmark & Method Therefor" are pending.

Response to Arguments

2. Applicant's changes to the abstract and drawings are acknowledged and the objections pertaining thereto are hereby withdrawn.

Specification

3. In response to an objection to the specification under 37 C.F.R. §1.75(d)(1) applicant argued that "MPEP 608.01(o) is not applicable." This argument is not convincing as and the objection is hereby reiterated.
4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Applicant is advised that only the limitation which was added to overcome the prior art is considered.
5. All objections not addressed in Applicant's response are herein reiterated.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roel-Ng et al. (US 6,002,936) in view of Sekizawa et al. (US 5,410,651).

Roel substantially teaches the invention as claimed including a telecommunications system and method for allowing a cellular network to determine the optimum positioning method, having knowledge of all available network-based and terminal-based positioning methods. (See abstract)

Claim 1:

Roel substantially teaches a mobile computing device comprising:

a processor; and (See Fig. 3 index (300) inherently includes a processor)

a memory, wherein the mobile computing device is adapted to dynamically generate a client classmark as the mobile computing device is moved. (See Fig. 3 indices (300, 310) device 300 inherently includes memory – See also col. 4, line 60-col. 5, line 14)

Roel-Ng is silent as to “a monitor adapted to track a load status of the processor, wherein the client classmark is generated at least in part based on the load status of the processor.” However, Sekizawa does. See col. 1, lines 64-66; col. 3, lines 55-66; and col. 7, lines 10-41 **particularly lines 10-12, 25-29 and 38-42**. Hence, it would have been obvious for an artisan of ordinary skill in the art to combine the teachings of Roel-

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Ng with the program loading method of Sekizawa. Such system would greatly improve the situation when a processor undergoes a concentrated load where the rapidity of a series of processes is reduced.

Claim 2:

Roel teaches the mobile computing device of claim 1, wherein the mobile computing device is further adapted to communicate using at a first and second communication service, the client classmark being generated depending, at least in part, on availability of the first and second communication service. (See Fig. 1 (10, 12, 18, 25), col. 4, line 41-59.)

Claim 5:

Roel-Ng teaches the mobile computing device of claim 1, wherein the memory is adapted to store the client classmark. (See Fig. 3 index (310), col. 5, lines 1-14. It is inherent that the client classmark is stored in memory.)

8. Claims 6, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roel-Ng et al. (US 6,002,936) in view of Purpura (US 6,973,518).

Claim 6:

Roel-Ng substantially teaches a method comprising:

determining what communication services are available to a device; and

maintaining a client classmark for the device based upon what communication

services are available. (See Fig. 1 index (10, 12, 18, 25), col. 5, lines 1-14. Roel-Ng is

silent as to "polling to determine one or more hardware capabilities of the device,

wherein maintaining the client classmark includes updating the client classmark to

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reflect one or more indicators about the one or more hardware capabilities of the device.” However, Purpura does disclose said limitation. See col. 9, lines 35-39 and col. 11, lines 20-23. Hence, it would have been obvious for an artisan of ordinary skill in the art to combine the teachings of Roel-Ng with the mobile apparatus for configuring portable devices as taught by Purpura. Such system would provide for hardware and software configuration of different devices.

Claim 8:

Roel-Ng substantially teach the method of claim 6, further comprising:

polling to determine logical capabilities of the device, wherein maintaining the client classmark includes maintaining a client classmark for the device based upon on-board software of the device.

Roel-Ng teaches client classmark but does not specifically teach software capabilities.

However, However, Purpura does disclose said limitation. See col. 11, lines 20-23.

Hence, it would have been obvious for an artisan of ordinary skill in the art to combine the teachings of Roel-Ng with the mobile apparatus for configuring portable devices as taught by Purpura. Such system would provide for software configuration of different devices.

Claim 11

Roel-Ng teaches the method of claim 6 as discussed above, further comprising:

adjusting the execution of an application on a processor in the device depending on the client classmark.” (See col. 4, line 60-col. 5, line 14.)

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9. Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roel-Ng et al. (US 6,002,936) in view of Purpura (US 6,973,518) in further view of Koehne (EP 0 980 190 A1.)

Claim 9:

Roel-Ng and Purpura substantially teach the method of claim 6, further comprising:

defining user preferences, wherein maintaining the client classmark includes maintaining a client classmark for the device based upon the user preferences.

Roel-Ng and Purpura do not specifically teach user preferences. However, Koehne explicitly teaches user preferences at paragraphs 0043 and 0056.

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng and Purpura with the user preferences as taught by Koehne because user preferences would be used to provide a specific service.

Claim 13:

Roel-Ng and Purpura substantially teach the method of claim 6, further comprising storing the client classmark in a memory of the device.

Roel-Ng inherently teaches storing the client classmark in memory, it is not explicit. However, Koehne explicitly teaches storing the client classmark in memory at paragraphs 0041. (modes of operation)

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng and Purpura with

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selecting the modes of operation as taught by Koehne because it would enhance QoS by providing the client with requested service.

10. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roel-Ng et al. (US 6,002,936) in view of Purpura (US 6,973,518) in further view of Sekizawa et al. ('651.)

Claim 10

The method of claim 6, further comprising:

determining a current load of a processor in the device, wherein maintaining the client classmark includes maintaining a client classmark for the device based upon the current load of the processor.

Roel-Ng teaches client classmark but does not specifically teach a monitor to track the processor's load or performance status. However, Rawson explicitly teaches this limitation throughout specifically at col. 4, lines 25-30.

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng with the performance monitor as taught by Rawson because performance counters would permit processor's performance parameters to be monitored and measured where the information obtained from these counters can then be used for tuning system performance.

Claim 12:

Roel-Ng and Purpura substantially teach the method of claim 6, further comprising:

requesting with a first application executing on a processor in the device that a second application executing on the processor modify its operational characteristics.

This claim is objected to because it depends upon a rejected claim.

11. Claims 14, 16-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koehne (EP 0 980 190 A1) in view of Purpura (US 6,973,518).

Claim 14:

Koehne substantially teaches an article comprising a storage medium having stored thereon instructions, that, when executed by a computing platform, results in: polling to determine what communication services are available to the article; and dynamically generating a client classmark for the article based upon what communication services are available. (See paragraphs 0043-0057)

Koehne is silent as to “polling to determine one or more hardware capabilities of the device, wherein maintaining the client classmark includes updating the client classmark to reflect one or more indicators about the one or more hardware capabilities of the device.” However, Purpura does disclose said limitation. See col. 9, lines 35-39 and col. 11, lines 20-23. Hence, it would have been obvious for an artisan of ordinary skill in the art to combine the teachings of Koehne with the mobile apparatus for configuring portable devices as taught by Purpura. Such system would provide for hardware and software configuration of different devices.

Claim 16:

Koehne substantially teaches the article of claim 15 as discussed above; Koehne does not explicitly teach “wherein the instructions, when executed, further result:

polling to determine logical capabilities of the article, wherein dynamically generating the client classmark includes generating a client classmark for the article based upon the logical capabilities of the device. (See paragraph 0043-0057.) (the modes of operation supported are directly related to on-board software.)

However, Purpura does disclose said limitation. See col. 11, lines 20-23. Hence, it would have been obvious for an artisan of ordinary skill in the art to combine the teachings of Koehne with the mobile apparatus for configuring portable devices as taught by Purpura. Such system would provide for hardware and software configuration of different devices.

Claim 17:

Koehne teaches the article of claim 15, wherein the instructions, when executed, further result:

defining user preferences, wherein dynamically generating the client classmark includes generating a client classmark for the article based upon the user preferences. (See paragraph 0043 and 0056.)

Claim 19:

Koehne substantially teaches the article of claim 15 as discussed above, Koehne does not explicitly teach "wherein the instructions, when executed, further result: adjusting the execution of an application on a processor in the article depending the client classmark." (See paragraph 0043-0057.)

However, Purpura does disclose said limitation throughout. See col. 9, lines 27-65. Hence, it would have been obvious for an artisan of ordinary skill in the art to

combine the teachings of Koehne with the mobile apparatus for configuring portable devices as taught by Purpura. Such system would provide for hardware and software configuration of different devices.

12. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koehne (EP 0 980 190 A1) in view of Purpura (US 6,973,518) in further view of Sekizawa et al. ('651.)

Claim 18:

Koehne and Purpura substantially teach the article of claim 15 as discussed above; Koehne and Purpura are silent as to " wherein the instructions, when executed, further result:

determining a current load of a processor in the article, wherein dynamically generating the client classmark includes generating a client classmark for the article based upon the current load of the processor."

Koehne teaches client classmark but does not specifically teach a monitor to track the processor's load or performance status. However, Sekizawa does. See col. 1, lines 64-66; col. 3, lines 55-66; and col. 7, lines 10-41 **particularly lines 10-12, 25-29 and 38-42**. Hence, it would have been obvious for an artisan of ordinary skill in the art to combine the teachings of Roel-Ng with the program loading method of Sekizawa. Such system would greatly improve the situation when a processor undergoes a concentrated load where the rapidity of a series of processes is reduced.

CONCLUSION

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel Coffy whose telephone number is (571) 272-3997. The examiner can normally be reached on 8:30 - 5:00 P.M.

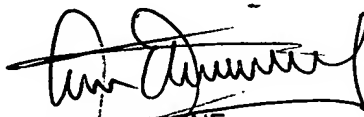
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-3997. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Emmanuel Coffy,
Patent Examiner
Art Unit 2157

EC
Jan 9, 2006



ARIO ETIENNE
PRIMARY EXAMINER